



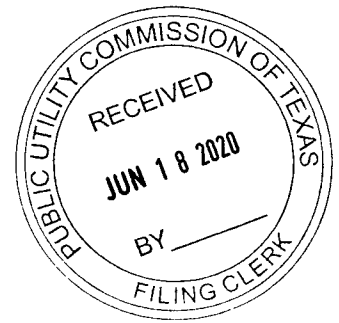
Control Number: 49737



Item Number: 340

Addendum StartPage: 0

PUC DOCKET NO. 49737
SOAH DOCKET NO. 473-19-6862



APPLICATION OF SOUTHWESTERN	§	
ELECTRIC POWER COMPANY FOR	§	BEFORE THE PUBLIC UTILITY
CERTIFICATE OF CONVENIENCE	§	
AND NECESSITY AUTHORIZATION	§	
AND RELATED RELIEF FOR THE	§	COMMISSION OF TEXAS
ACQUISITION OF WIND	§	
GENERATION FACILITIES	§	

SOUTHWESTERN ELECTRIC POWER COMPANY'S REPLY TO THE EXCEPTIONS
TO THE PROPOSAL FOR DECISION

TABLE OF CONTENTS

I.	INTRODUCTION.....	2
V.	CERTIFICATE OF CONVENIENCE AND NECESSITY STANDARD OF REVIEW	4
VI.	ANALYSIS OF ECONOMICS OF SELECTED WIND FACILITIES	11
C.	Economic Modeling.....	11
2.	Projected Production Cost Savings	11
a.	Natural Gas Prices	11
VII.	PROPOSED CONDITIONS	13
C.	Staff's and Intervenors' Proposed Conditions	13
XI.	SALE, TRANSFER, MERGER ISSUES	15
XII.	CONCLUSION	16

**PUC DOCKET NO. 49737
SOAH DOCKET NO. 473-19-6862**

APPLICATION OF SOUTHWESTERN	§	
ELECTRIC POWER COMPANY FOR	§	BEFORE THE PUBLIC UTILITY
CERTIFICATE OF CONVENIENCE	§	
AND NECESSITY AUTHORIZATION	§	
AND RELATED RELIEF FOR THE	§	COMMISSION OF TEXAS
ACQUISITION OF WIND	§	
GENERATION FACILITIES	§	

**SOUTHWESTERN ELECTRIC POWER COMPANY’S REPLY TO THE EXCEPTIONS
TO THE PROPOSAL FOR DECISION**

Southwestern Electric Power Company (SWEPCO or the Company) files this reply to the exceptions of intervenors Office of Public Utility Counsel (OPUC), Texas Industrial Energy Consumers (TIEC), Golden Spread Electric Cooperative (Golden Spread), and East Texas Electric Cooperative, Inc. and North Texas Electric Cooperative, Inc. (ETEC-NTEC).

I. INTRODUCTION

While introducing its exceptions, OPUC repeats the Proposal for Decision’s (PFD) statement that “[c]redible evidence shows that the Project *could result* in cost increases to the Company’s customers over the life of the Project.”¹ OPUC’s statement is indicative of the PFD’s (and intervenors’) failure to apply the proper statutory standard and consider what is in the best interest of Texas customers. The Legislature does not ask SWEPCO to demonstrate that the acquisition of the Selected Wind Facilities will lower costs for customers in every conceivable circumstance. Instead, the Legislature has encouraged utilities to seek out projects that will provide a probable lowering of costs to customers.² If certainty or near certainty is the standard by which the Commission will evaluate this and future proposals, the Commission will unnecessarily limit the projects that will be proposed on behalf of Texas customers.

While introducing its exceptions, TIEC makes the statement, “[t]here is little uncertainty about the cost to ratepayers should the Commission approve the CCN.”³ This statement is true

¹ OPUC Exceptions at 2 (quoting the PFD at 6) (emphasis added).

² Public Utility Regulatory Act, Tex. Util. Code Ann. (PURA) § 37.056(c)(4).

³ TIEC Exceptions at 4.

and is one of the two primary aspects of the Selected Wind Facilities that deliver value to customers:

- (1) The facilities will incur no fuel cost at all. Therefore, the cost of providing energy to customers for the next 30 years is driven primarily by the capped, fixed-price investment SWEPCO will make in the Selected Wind Facilities, and
- (2) With the production of energy, these facilities will earn federal Production Tax Credits (PTCs), the value of which is determined by law.

TIEC also correctly observes that the 2022 revenue requirement of the facilities will be more than \$130 million.⁴ The more exact figure shown in the direct testimony of SWEPCO witness John Torpey is \$132 million.⁵ When combined with the \$88 million of PTCs the facilities are expected to earn in 2022, the net 2022 revenue requirement is \$44 million, allowing the facilities to produce energy at the facilities' bus bar in 2022 for a net cost of \$14.09/MWh or 1.41 cents per kWh.⁶

TIEC writes that SWEPCO's case for benefits is based on "unrealistic" natural gas price forecasts.⁷ However, the customer value identified above is not dependent on the price of natural gas. What TIEC is really alleging here is that the price of natural gas might be so low for the next 30 years that the market will produce energy prices below the cost of the mostly fixed-price, low cost energy and the PTCs produced by the Selected Wind Facilities. While it is conceivable this may be the case, it is not likely. As discussed in SWEPCO's exceptions, nearly all of the 45 natural gas price forecasts in the evidentiary record are above the breakeven natural gas price curve for the Selected Wind Facilities.

It is ironic that TIEC brands natural gas forecasts contained in the record as "unrealistic." TIEC has no expertise in natural gas price forecasting. TIEC witness Mr. Pollock's resume reveals no particular expertise in or experience with the natural gas industry.⁸ Nor did TIEC make any

⁴ TIEC Exceptions at 4.

⁵ Direct Testimony of John Torpey, SWEPCO Ex. 8, Errata Exhibit JFT-3 at 1-5 (each of these five pages shows the same revenue requirement and the same PTC value earned at the P50 level of production.).

⁶ The 2022 revenue requirement net of the PTCs is divided by the product of (8760 hours/year) x (.4401 "P50" capacity factor) x (810 MW) as expressed by the following formula:
$$\frac{(132,000,000 - 88,000,000)}{(8760) \times (.4401) \times (810)}$$

⁷ TIEC Exceptions at 4.

⁸ See Redacted Direct Testimony of Jeffry Pollock, TIEC Ex. 1 at Appendix A.

effort to seek out an independent natural gas price forecast it considered to be realistic:

Q Okay. Now, to inform yourself about the evaluation of wind facilities, you looked at only the natural gas forecasts given to you by SWEPCO in discovery. Isn't that correct?

A That was sort of the primary source of my analysis, yes.

Q Well, there wasn't anything else, was there, besides EIA and the forecasts provided to you by SWEPCO? Correct?

A Right. The EIA stuff was in addition to what SWEPCO provided.

Q Right. But you didn't go out -- you didn't seek any independent natural gas forecasts yourself, did you?

A I did not.⁹

TIEC did not even consult with its own clients regarding the future price of natural gas – clients that include one of the largest natural gas and oil exploration and production companies in the United States and the owner of the largest natural gas transportation pipeline network in the United States.¹⁰

Current circumstances provide SWEPCO and the Commission with the opportunity to provide Texas customers, *under a probable range of future conditions*, with lower costs for the next 30 years. However, the PFD has erroneously set the bar so high that Texas customers will be denied projects, now and in the future, that will likely lower their costs. SWEPCO respectfully requests that the Commission reject the PFD, reject the exceptions of intervenors as discussed below, and allow Texas customers to participate in the benefits and cost of the Selected Wind Facilities.

V. CERTIFICATE OF CONVENIENCE AND NECESSITY STANDARD OF REVIEW

Golden Spread's exceptions make several arguments throughout various sections of the

⁹ Tr. at 609:25-610:14 (Pollock Cross) (Feb. 26, 2020).

¹⁰ Tr. at 602:9-15 (Pollock Cross) (Feb. 26, 2020) ("No. I haven't consulted with any client with respect to what their view happens to be.")

PFD outline. For consistency and cohesiveness, SWEPCO will address them all here.

Effect on Utilities Serving the Proximate Area

Golden Spread's exceptions argue that, under PURA § 37.056's direction to consider "the effect of granting the certificate on any electric utility serving the proximate area," the Commission should require SWEPCO to hold it harmless from cost allocations under the FERC-approved SPP Open Access Transmission Tariff (OATT). Putting aside the evidence that Golden Spread will not be "harmed" by SPP's cost allocations (as discussed below), considering the effect on utilities "serving the proximate area" does not mean that the Commission should alter cost allocations under the SPP OATT, a FERC tariff. The PFD correctly rejects Golden Spread's argument on this issue.

The Commission has concluded in CCN cases involving out-of-state facilities, that "[b]ecause the location of the generation unit" is outside of Texas "there will be no adverse effects on any other electric utility serving in Texas."¹¹ This is a reasonable interpretation of § 37.056's provision to consider the effect on utilities "serving the proximate area" as referring to operational effects on utilities serving the area of the proposed facility, which in this case is in Oklahoma. Because the Commission does not regulate utility service in Oklahoma, it is also reasonable for the Commission to conclude that the Selected Wind Facilities will not affect Texas utilities under § 37.056 because they do not serve the proximate area of the proposed facilities. It is not reasonable to conclude, as Golden Spread urges, that effect on utilities serving the proximate area means overriding cost allocations under the SPP OATT.

Although Golden Spread claims its hold harmless request "does not equate to a call for the Commission to change the SPP OATT,"¹² Golden Spread is asking the Commission to reallocate to SWEPCO and its customers costs allocated to Golden Spread under the OATT. In its initial brief, Golden Spread argued that if the SPP Integrated Transmission Planning (ITP) process

¹¹ See *Application of Southwestern Electric Power Company for Certificate of Convenience and Necessity Authorization for a Combined Cycle Power Plant in Louisiana*, Docket No. 33048, Order at Finding of Fact (FoF) No. 57 (Mar. 8, 2007); see also *Application of Southwestern Electric Power Company for Certificate of Convenience and Necessity Authorization for Power Plant in Arkansas*, Docket No. 32918, Order at FoF No. 60 (Jan. 19, 2007); *Application of Southwestern Electric Power Company for Certificate of Convenience and Necessity Authorization for a Coal-Fired Power Plant in Arkansas*, Docket No. 33891, Order at FoF No. 43 (Aug. 12, 2008).

¹² Golden Spread Exceptions at 2.

mitigates congestion affecting the Selected Wind Facilities, the SPP OATT's cost allocation would create "unjust cost shifts" to Golden Spread.¹³

As discussed further below, there is no factual basis for Golden Spread's claims, but that is somewhat beside the point. At its core, Golden Spread is objecting to being allocated costs under the SPP OATT for transmission projects that it believes are related to the Selected Wind Facilities, even though it has not established that any such allocation may occur, that SPP projects would benefit only the Selected Wind Facilities, or that the SPP OATT's cost allocation for those projects is inappropriate. In the end, Golden Spread is asking to be excused from costs allocated to it under SPP's FERC-approved tariff. That request would be inappropriate even if Golden Spread had established any factual predicate for it.

Golden Spread attempts to compare its requested hold harmless to other situations that bear no resemblance to its request. For example, Golden Spread cites Docket No. 46042, SPS' CCN application for the TUCO to Yoakum transmission line, where the Commission noted that the proposed line had been approved by appropriate SPP committees in accordance with the SPP OATT.¹⁴ However, that case was simply an example of the Commission deferring to the recommendation of an independent system operator concerning need for a new transmission line,¹⁵ just as the Commission does for Electric Reliability Council of Texas (ERCOT) endorsed projects reviewed by the Regional Planning Group. Moreover, the proposed SPS line was located in Texas and the Commission's evaluation of the effect on proximate utilities focused on the benefits of increased system reliability and capacity.¹⁶ The case did not involve anything like Golden Spread's request that the Commission reallocate costs that might be allocated to Golden Spread under the SPP OATT.

The other situations cited in Golden Spread's exceptions also bear no resemblance to requesting a hold harmless against the SPP OATT's cost allocation provisions. Golden Spread

¹³ Golden Spread's Initial Brief at 18 (Mar. 9, 2020).

¹⁴ Golden Spread Exceptions at 3.

¹⁵ See 16 Tex. Admin. Code § 25.101(b)(3)(A)(ii).

¹⁶ *Application of Southwestern Public Service Company to Amend a Certificate of Convenience and Necessity for a 345-kV Transmission Line within Hale, Hockley, Lubbock, Terry and Yoakum Counties (TUCO to Yoakum)*, Docket No. 46042, Order at FoF No. 119 (Sept. 21, 2017).

cites the interconnection costs for the Selected Wind Facilities,¹⁷ which were based on the SPP interconnection studies required to be submitted in the Company's request for proposals process. Golden Spread also refers to the Company's congestion cost forecast, which assumed that the SPP ITP process would advance transmission projects to contain congestion but also included a sensitivity study with higher congestion costs where it became economical for the Company to build a gen-tie.¹⁸ Each of these situations involved determining reasonable cost projections and sensitivities to use in the Company's cost-benefit analysis for the Selected Wind Facilities. None had anything to do with overriding the cost allocation provisions of the SPP OATT, as Golden Spread is proposing. Nor is there anything logically inconsistent about using these cost estimates in the Company's cost-benefits analysis while rejecting Golden Spread's proposed hold harmless, as Golden Spread claims.¹⁹

The PFD properly rejected Golden Spread's request to be held harmless from costs allocated under the SPP OATT. That request is inappropriate and beyond the scope of considering the "effect of granting the certificate on any electric utility serving the proximate area" under PURA § 37.056.

But even if cost allocation under the SPP OATT *were* viewed as an effect on utilities serving the proximate area under § 37.056, the PFD *did consider* the effect of the Selected Wind Facilities on transmission ratepayers and *rejected* Golden Spread's arguments. Golden Spread's exceptions rest on a series of misrepresentations of the PFD's proposed findings and the record evidence in this proceeding and should be rejected by the Commission. Perhaps this is best illustrated by two sentences in the PFD that Golden State requests be struck:

Furthermore, no evidence was presented that shows the Project would negatively affect SPP's transmission ratepayers in Texas, which is an issue that must be considered in accordance with PURA § 37.056(c)(3). Accordingly, if the Application is approved, the ALJs recommend the Commission reject Golden Spread's proposed conditions.²⁰

These two sentences demonstrate that the PFD considered whether the Selected Wind

¹⁷ Golden Spread Exceptions at 4-5.

¹⁸ Golden Spread Exceptions at 5.

¹⁹ Golden Spread Exceptions at 6.

²⁰ PFD at 99.

Facilities would negatively impact other utilities. It did not foreclose consideration of that issue as Golden Spread inexplicably claims. These sentences make it clear that the PFD found, after considering all the evidence, that there was no indication that other utilities would be harmed and, as a result, recommended that Golden Spread's hold harmless condition not be imposed.

There is No Evidence that the Selected Wind Facilities Would Negatively Affect SPP's Transmission Ratepayers in Texas.

The crux of Golden Spread's argument is that the Selected Wind Facilities will negatively affect SPP's transmission ratepayers in Texas.²¹ This is incorrect and the PFD's finding that there was no evidence indicating that these ratepayers would be harmed is proper. In fact, the evidence affirmatively shows that transmission ratepayers in Texas will *not* be harmed by the Selected Wind Facilities because the SPP OATT appropriately allocates grid upgrade costs.

Golden Spread offered no witnesses and submitted no testimony at hearing. All of its charges are contained in a Statement of Position and in its other pleadings, none of which constitute evidence in this proceeding. The only evidence of harm that Golden Spread cites in its exceptions is a hypothetical question to SWEPCO witness Pfeifenberger that Golden Spread claims acknowledged that it was likely that transmission built as a result of the SPP ITP process would include upgrades that would otherwise be assigned through the firm transmission planning process to SWEPCO, which would increase the probability that costs to deliver the generation from the project to the SPP load would be paid by other transmission ratepayers.²²

However, as the PFD found, there is no evidence that any of these ratepayers will be harmed. Instead, the evidence shows that SPP ITP projects are based on a variety of factors, not just congestion affecting the Selected Wind Facilities, and would serve multiple needs and benefit multiple users of the grid.²³ SWEPCO witness Richard Ross, the Managing Director Regional Transmission Organization (RTO) Policy and FERC Recovery for American Electric Power Service Corporation (AEPSC), testified in detail regarding the methodology and impact of cost allocation provisions of the FERC-approved SPP OATT. He explained that there is no evidence that SPP will, in fact, allocate any specific transmission costs to any specific party, much less that

²¹ Golden Spread Exceptions at 7-8.

²² Golden Spread Exceptions at 8.

²³ Rebuttal Testimony of Richard Ross, SWEPCO Ex. 21 at 8:19-9:19.

any such allocation will turn out to be inappropriate. Mr. Ross also explained that SPP's OATT is a FERC-approved tariff, any transmission upgrade costs allocated pursuant to its terms are based on expected benefits, and those allocations are not "fundamentally unjust" as Golden Spread has claimed throughout this proceeding.²⁴ Under SPP OATT cost allocation procedures found just and reasonable by FERC, costs that should be directly assigned to SWEPCO will in fact be directly assigned to SWEPCO, while system upgrades that also benefit others will be allocated regionally.²⁵

Golden Spread twists the PFD's finding that there was no evidence of harm to SPP transmission ratepayers into an unjustified assertion that it unfairly placed the burden of proof on this issue on Golden Spread.²⁶ SWEPCO's burden of proof on this issue was more than met by, among others, Mr. Ross in his testimony. As noted above, he testified extensively regarding the SPP OATT's allocation provisions and his testimony was unchallenged.

Golden Spread also criticizes SWEPCO for applying for firm transmission service from the SPP for the Selected Wind Facilities without committing to obtain the service.²⁷ This criticism is also unjustified. Mr. Ross explained that SWEPCO submitted requests for firm transmission service to the SPP but it was not possible to submit the requests prior to the initiation of this proceeding. The requests were made so that SWEPCO could consider whether such service would be beneficial for customers. Once SWEPCO receives a response from the SPP, it will decide whether the additional benefits of firm service exceed the cost of obtaining the service.²⁸ Mr. Ross further explained that it would be unreasonable for SWEPCO to commit to obtaining firm transmission service in advance of determining if the costs exceed its benefits.²⁹

Although Golden Spread also criticizes SWEPCO for failing to supplement an RFI request that asked about its application for firm transmission service earlier than it did,³⁰ Mr. Ross

²⁴ SWEPCO Ex. 21 at 2:14-17, 4:12-22, 5:6-8, 6:15-19, 11:3-13.

²⁵ SWEPCO Ex. 21 at 4:16-22.

²⁶ Golden Spread Exceptions at 8.

²⁷ Golden Spread Exceptions at 9.

²⁸ SWEPCO Ex. 21 at 7:18-21.

²⁹ SWEPCO Ex. 21 at 8:13-17.

³⁰ Golden Spread Exceptions at 9.

explained that there was a question whether the application would be accepted and considered by the SPP and SWEPCO updated the response after it had met with SPP representatives and was confident that the request would be accepted.³¹ This activity occurred around the end-of-year holiday season.³²

The PFD Properly Found that Golden Spread's Requested Hold Harmless Provision Should not be Imposed.

If the application is approved, Golden Spread wants the Commission to order SWEPCO to hold Golden Spread harmless for costs it may be allocated pursuant to the SPP OATT. It points to the Commission's approval, in Docket No. 47576,³³ of a settlement containing compensation for certain SPP costs.³⁴ However, as correctly pointed out by the PFD, the Commission's order in Docket No. 47576 does not support Golden Spread's arguments because it was a settled case. In Docket No. 47576, Lubbock Power and Light (LPL) sought to integrate a portion of its system and load into the ERCOT. Various parties argued that the integration would create stranded costs once the integration into ERCOT was complete. The Commission approved an unopposed settlement in which LPL agreed to make specified payments to SPS as agreed compensation for stranded costs.³⁵ Docket No. 47576 involved a party leaving the SPP system, not overriding the SPP OATT's cost allocation provisions for SPP transmission service providers as Golden Spread requests in this case.

Conclusion

The evidence shows that SPP ITP projects are based on a variety of factors, not just congestion affecting the Selected Wind Facilities, and would serve multiple needs and benefit multiple users of the grid.³⁶ The cost for such projects is allocated under the terms of the FERC-approved SPP OATT. Costs that should be directly assigned to SWEPCO will in fact be directly

³¹ Tr. at 827:21-25 (Ross Cross) (Feb. 26, 2020).

³² Tr. at 827:2-830:15 (Ross Cross) (Feb. 26, 2020).

³³ Golden Spread's exceptions appear to mistakenly refer to this docket as Docket No. 47467.

³⁴ Golden Spread Exceptions at 10.

³⁵ *Application of the City of Lubbock Through Lubbock Power and Light for Authority to Connect a Portion of its System with the Electric Reliability Council of Texas*, Docket No. 47576, Final Order, FoF Nos. 70 and 71 (Mar. 15, 2018).

³⁶ Tr. at 324:3-325:2, 326:9-15, 350:11-21, 358:2-18 (Sheilendranath Cross and Redirect) (Feb. 25, 2020).

assigned to SWEPCO, while costs for system upgrades that benefit others will be allocated regionally.³⁷ These cost allocation procedures have been found to be just and reasonable by FERC and, as a result, Golden Spread's request that this Commission require SWEPCO to hold it harmless for these costs is inappropriate.³⁸ Golden Spread is asking the Commission for a blank check from SWEPCO's customers to reimburse it for future transmission upgrade costs that SPP might allocate to Golden Spread based on benefits that it receives. This would be an unprecedented windfall and should be rejected by the Commission.

VI. ANALYSIS OF ECONOMICS OF SELECTED WIND FACILITIES

C. Economic Modeling

2. Projected Production Cost Savings

a. Natural Gas Prices

The PFD, at Finding of Fact No. 50, finds that the New York Mercantile Exchange (NYMEX) futures prices are reflective of "actual transactions between buyers and sellers who put real money at risk in their day-to-day operations." Both TIEC and OPUC take exception with this finding, not because they disagree with it but, instead, because these two parties do not appreciate the PFD's frank factual discussion about what NYMEX futures prices are and what they are not. First and foremost, NYMEX futures prices are not a forecast of future natural gas prices. OPUC and its witness Karl Nalepa admit this fact. As described by OPUC and its witness, the NYMEX futures prices are a "a daily report of natural gas prices that are not strictly a forecast, but rather a set of future prices at which market participants are willing to enter into natural gas transactions."³⁹ NYMEX has never marketed its natural gas futures prices as a long-term "forecast" of future natural gas prices. At hearing, TIEC witness Mr. Pollock accepted this fact: "I don't know that for a fact, but I would – I would accept that because it is a – it is a market platform, and that's what it's intended to do, is to provide price discovery."⁴⁰

Another fact that TIEC and OPUC do not appreciate is that those actual NYMEX

³⁷ SWEPCO Ex. 21 at 4:16-22.

³⁸ SWEPCO Ex. 21 at 4:12-5:2.

³⁹ OPUC's Initial Brief at 10 (quoting the Direct Testimony of Karl Nalepa, OPUC Ex. 1 at 21:17-20) (Mar. 9, 2020).

⁴⁰ Tr. at 647:13-16 (Pollock Cross) (Feb. 26, 2020).

transactions between buyers and sellers extend only about three years into the future. The PFD correctly observes this fact when it states, “almost all of the actual transactions reflected are in the first three years of the future trend.”⁴¹ TIEC and OPUC cannot credibly dispute this fact because their own witnesses have confirmed it. In discovery, Mr. Pollock conceded that NYMEX futures contracts are liquid only in the near term of “up to 36 months.”⁴² Further, both Mr. Pollock and OPUC witness Karl Nalepa were asked to provide the “actual transactions between buyers and sellers,” by year, reflected in the NYMEX futures prices they relied on. Both discovery responses show no or virtually no actual transactions between buyers and sellers beyond 36 months.⁴³

In an attempt to portray NYMEX futures prices as more than the limited data set they are, TIEC writes that, for future months and years in which there are no actual trades, the company that owns the NYMEX provides prices based on information such as “bids and asks.”⁴⁴ At hearing, TIEC witness Pollock had to admit that the bids and asks being referred to are bids no one accepted and offers no one was willing to buy:

Q Okay. We’ve figured out that there are no actual trades after about the first 36 months. Correct?

A In the 30-day period, that’s right.

* * *

Q Okay. All right. So let’s talk about everything after that 36 months. So then it says that they base -- they base prices on bids and offers. Let me ask you this: A bid is a bid that somebody put in to the NYMEX and nobody bought it. Correct?

A At that price, yeah. At that time, yes.

Q That’s right. And “ask” means somebody said we’ll –

A Willing to sell.

Q -- buy it at this price, and nobody was willing to sell it to

⁴¹ PFD at 33.

⁴² TIEC’s response to SWEPCO RFI No. 1-5, SWEPCO Ex. 34.

⁴³ OPUC’s response to SWEPCO RFI No. 1-3, SWEPCO Ex. 26; TIEC’s response to SWEPCO RFI No. 1-6, SWEPCO Ex. 35.

⁴⁴ TIEC Exceptions at 8-9.

them. Correct?

A Buyers and sellers, yes.⁴⁵

The evidence establishes that the majority of NYMEX futures prices are not based on actual transactions between buyers and sellers. Further, NYMEX natural gas futures contracts are not available at all beyond the next twelve years. TIEC and OPUC had to create their own methodology for the extension (“trending”) of these prices.⁴⁶

The PFD states that NYMEX futures prices can be used to predict near-term natural gas prices, “recent events regarding the pandemic perhaps causing an exception.”⁴⁷ However, the PFD goes further and correctly acknowledges both what the NYMEX futures prices are and what they are not. They are not a long-term forecast of natural gas prices for the next 30 years – the length of time that the Selected Wind Facilities will provide service to customers. No change to the PFD is warranted.

VII. PROPOSED CONDITIONS

C. Staff’s and Intervenors’ Proposed Conditions

In its exceptions, OPUC asks the Commission to condition SWEPCO’s acquisition of the Selected Wind Facilities on the Company providing a “guaranteed minimum energy savings” to Texas customers.⁴⁸ While OPUC is vague about what would constitute a “guaranteed minimum energy savings,” as one data point, OPUC points to the Commission’s order in Docket No. 46936, which approved the acquisition of wind resources by Southwestern Public Service Company (SPS). OPUC writes, “the parties in Docket No. 46936 entered into a settlement agreement that included a provision that guaranteed minimum energy savings” for customers.⁴⁹ Based on this fact, OPUC concludes:

The inclusion of a minimum energy savings guarantee in a negotiated settlement agreement demonstrates that parties in another CCN case have determined that such a guarantee is reasonable. The fact that SPS was willing to agree to a minimum energy savings guarantee makes it reasonable to request that SWEPCO agree to the

⁴⁵ Tr. at 643:23-25 and 644:23-645:10 (Pollock Cross) (Feb. 26, 2020).

⁴⁶ Rebuttal Testimony of Karl Bletzacker, SWEPCO Ex. 17 at 3:1-5.

⁴⁷ PFD at 33.

⁴⁸ OPUC Exceptions at 4-6.

⁴⁹ OPUC Exceptions at 5.

same guarantee in this proceeding.⁵⁰

The fact is that SWEPCO has agreed to a net benefits guarantee in Louisiana that is very similar to that provided by SPS in Docket No. 46936. As SWEPCO stated in its exceptions, SWEPCO will accept an order from this Commission that is conditioned on SWEPCO providing to Texas customers the same guarantees being provided to customers in Louisiana, Arkansas, and Oklahoma, including the net benefits guarantee.

The guarantee that is being cited by OPUC is described in the Docket No. 46936 order as a “Ten-Year Tracking of Costs and Estimated Savings.” The Commission identifies the mechanics of that guarantee in Finding of Fact No. 79 of that order. The Commission writes that, during the first ten years of each project’s operation, SPS will compare the cost of each project to the savings calculated in the manner described in that finding of fact. That savings is calculated in three parts: (i) the value of the PTCs, (ii) the value of the renewable energy credits (RECs), and (iii) the estimated fuel savings based on a re-dispatch of SPS’s resources with and without each project, irrespective of whether those resources would actually have been re-dispatched to replace the wind project.⁵¹ The savings calculation contained in SWEPCO’s Louisiana settlement is very similar and includes (i) the value of the PTCs, (ii) the value of the RECs, (iii) the value of carbon emission savings, if any, and (iv) the estimated fuel savings based on a re-dispatch of SWEPCO’s existing resources with and without the Selected Wind Facilities, irrespective of whether those resources would actually have been re-dispatched to replace the facilities.⁵²

In the Wind Catcher proceeding in Oklahoma, Public Service Company of Oklahoma offered in settlement substantially the same net benefits guarantee contained in SWEPCO’s Louisiana settlement filed in this case. CARD witness Scott Norwood recommended, if the Commission were to approve the acquisition of the Selected Wind Facilities on behalf of Texas

⁵⁰ OPUC Exceptions at 5.

⁵¹ *Application of Southwestern Public Service Company for Approval of Transactions with ESI Energy, LLC and Invenergy Wind Development North America LLC, to Amend a Certificate of Convenience and Necessity for Wind Generation Projects and Associated Facilities in Hale County, Texas and Roosevelt County, New Mexico, and for Related Approvals*, Docket No. 46936, Order at FoF No. 79b (May 25, 2018).

⁵² *See Letter to ALJs re LA Settlement*, LPSC Docket No. U-35324 Joint Motion for Consideration of Proposed Uncontested Joint Stipulation and Settlement Agreement by the Commission Pursuant to Rule 57, Joint Stipulation and Settlement Term Sheet at, Attachment 3, subpart III Components of Net Benefits Equation (Apr. 14, 2020).

customers, that approval should be conditioned on SWEPCO providing a net benefits guarantee like the one agreed to in the Oklahoma Wind Catcher settlement. The PFD concludes:

The ALJs conclude that a net benefits guarantee would provide additional customer protection against the financial risk of the Project. Mr. Norwood persuasively recommended that a net benefits guarantee, like the one agreed to in the Oklahoma *Wind Catcher* settlement, would benefit the Project.⁵³

As noted above and in SWEPCO's exceptions, SWEPCO will accept an order from the Commission approving the acquisition of the Selected Wind Facilities on behalf of Texas customers that is conditioned on SWEPCO providing to Texas customers those guarantees provided to customers in Louisiana, Arkansas, and Oklahoma, including the net benefits guarantee contained in the Louisiana settlement. The adoption of this additional guarantee can only work to benefit Texas customers and cannot harm them.

In its exceptions, TIEC touts its participation in the Docket No. 46936 settlement,⁵⁴ but then distances itself from the net benefits guarantee that is very similar to the one TIEC supported in Docket No. 46936. TIEC criticizes the net benefits guarantee because it is based on a re-dispatch of SWEPCO's resources instead of future SPP energy market prices. However, the net benefits guarantee supported by TIEC and approved by the Commission in Docket No. 46936 was designed in the same way. TIEC falsely states that the net benefits guarantee is based on a re-dispatch of "SWEPCO's least efficient units."⁵⁵ The re-dispatch of SWEPCO's units for the net benefits guarantee will follow the industry standard of dispatching the most efficient units that are available, just as in the net benefits guarantee supported by TIEC and adopted by the Commission in Docket No. 46936. If the Commission were to approve the acquisition of the Selected Wind Facilities on behalf of Texas customers, it is difficult to understand why TIEC would oppose an additional guarantee that can only work to benefit customers and cannot harm them.

XI. SALE, TRANSFER, MERGER ISSUES

ETEC-NTEC and Golden Spread argue that the Commission should apply the PURA § 14.101 public interest standard in this case, despite the PFD's conclusion to the contrary, based

⁵³ PFD at 94.

⁵⁴ TIEC Exceptions at 4-5.

⁵⁵ TIEC Exceptions at 13.

on asserted policy reasons why § 14.101 should apply. Neither mention the plain language of the statute, which clearly indicates that it does not apply to an acquisition of facilities located outside Texas, as the PFD correctly concluded.⁵⁶

The relevant provision of § 14.101 states that unless a utility files a report with the Commission, it may not “sell, acquire, or lease a plant as an operating unit or system *in this state* for a total consideration of more than \$10 million” (emphasis added). The limitation of § 14.101 to a sale or acquisition of facilities in this state, *i.e.*, in Texas, could not be expressed any more plainly. The Commission clearly understood the legislature’s words when it promulgated 16 Tex. Admin. Code (TAC) § 27.74(b), which provides that “[p]ursuant to PURA § 14.101(a)(1), an electric utility shall not sell, acquire, or lease a plant as an operating unit or system *in the State of Texas* for a total consideration of more than \$10 million unless the utility reports such transaction to the commission” (emphasis added).

Even if ETEC-NTEC and Golden Spread had great policy arguments for applying § 14.101 in this case, which they do not, those arguments would be irrelevant. The legislature has clearly defined the scope of § 14.101, which does not apply to acquisition of the Selected Wind Facilities located in Oklahoma.

Finally, even if § 14.101 were applied to this proceeding, SWEPCO witness Tom Brice testified that acquisition of the Selected Wind Facilities meets the standards of that section.⁵⁷

XII. CONCLUSION

Current circumstances provide SWEPCO and the Commission the opportunity to provide Texas customers with predictable, low-cost power for the next 30 years. SWEPCO respectfully requests that the exceptions of OPUC, TIEC, Golden Spread, and ETEC-NTEC be rejected and that SWEPCO’s application be approved.

⁵⁶ PFD at 110.


⁵⁷ Direct Testimony of Thomas P. Brice, SWEPCO Ex. 2 at 28:1-21.

Respectfully submitted,

Melissa Gage
American Electric Power Service Corporation
400 West 15th Street, Suite 1520
Austin, Texas 78701
Telephone: (512) 481-3320
Facsimile: (512) 481-4591
magage@aep.com
AEPAUSTINTX@aep.com

William Coe
wcoe@dwmrlaw.com
State Bar No.00790477
Kerry McGrath
kmcgrath@dwmrlaw.com
State Bar No.13652200
Stephanie Green
sgreen@dwmrlaw.com
State Bar No. 24089784
Duggins, Wren, Mann & Romero, LLP
600 Congress Ave., Suite 1900
Austin, Texas 78701
Telephone: (512) 744-9300
Facsimile: (512) 744-9399

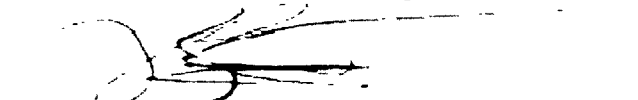
By:


William Coe

**ATTORNEYS FOR SOUTHWESTERN
ELECTRIC POWER COMPANY**

CERTIFICATE OF SERVICE

I certify that a true and correct copy of this motion was served on all parties of record this
18th day of June, 2020.


William Coe